

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket No. UM 2032**

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Investigation into the Treatment of Network  
Upgrade Costs for Qualifying Facilities

COMMUNITY RENEWABLE ENERGY  
ASSOCIATION, THE NORTHWEST &  
INTERMOUNTAIN POWER PRODUCERS  
COALITION, AND THE RENEWABLE  
ENERGY COALITION’S INITIAL  
COMMENTS ON JOINT UTILITIES’  
COMPLIANCE FILING

**I. INTRODUCTION AND SUMMARY**

The Community Renewable Energy Association (“CREA”), the Northwest & Intermountain Power Producers Coalition (“NIPPC”), and the Renewable Energy Coalition (the “Coalition”) (collectively the “Interconnection Customer Coalition”) respectfully submit these comments on the Joint Utilities’<sup>1</sup> Compliance Filing. The Joint Utilities’ Compliance Filing is made in response to the Public Utility Commission of Oregon’s (“Commission” or “OPUC”) Order No. 23-005’s direction that the Joint Utilities must allow qualifying facilities (“QFs”) to use Energy Resource Interconnection Service (“ERIS”) instead of Network Resource Interconnection Service (“NRIS”). The Interconnection Customer Coalition opposes the Joint Utilities’ Compliance Filing because it does not implement the Commission’s expressed policy and will instead undermine reasonable and legitimate use of the new ERIS option to bring renewable energy projects online without prohibitive network upgrades. For the reasons

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<sup>1</sup> The Joint Utilities are Portland General Electric Company (“PGE”), PacifiCorp, and Idaho Power Company (“Idaho Power”).

explained below, the Commission should require the Joint Utilities to promptly correct the Compliance Filing by making the following changes:

- Remove the requirement that a QF execute a non-standard power purchase agreement (“PPA”) prior to executing an ERIS Large Generator Interconnection Agreement (“LGIA”) or Small Generator Interconnection Agreement (“SGIA”) (collectively “GIA”).
- Amend the new interconnection procedures to clearly require the interconnecting utility to describe in reasonable detail in the ERIS reports the frequency and extent of curtailment that the utility “agrees obviates the need for the Network Upgrades identified in a NRIS report and can be accommodated through appropriate transmission service (*e.g.*, non-firm or PTP).”<sup>2</sup>

## II. COMMENTS

In reviewing the Joint Utilities’ Compliance Filing, the starting point should be the Commission’s Order No. 23-005 and the expressed policy therein with which the Joint Utilities have been directed to comply. The Commission’s goal was to enable QFs to avoid costly network upgrades by providing “some level of optionality for QFs to connect using ERIS”<sup>3</sup> and thereby “enable more efficient use of the grid.”<sup>4</sup> The Commission made two key directives. First, the Commission directed that on-system QFs should be provided the opportunity to be studied for both ERIS and NRIS.<sup>5</sup> Second, the Commission directed that that a utility must

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<sup>2</sup> Order No. 23-005, p. 34 (Jan. 20, 2023).

<sup>3</sup> Order No. 23-005, p. 33.

<sup>4</sup> Order No. 23-005, p. 34.

<sup>5</sup> Order No. 23-005, p. 34.

“negotiate a nonstandard contract that implements a QF’s decision, after review of both reports, to interconnect with a host utility using ERIS in exchange for the QF’s voluntar[y] commitment to allow curtailment at a level that the utility agrees obviates the need for the Network Upgrades identified in a NRIS report and can be accommodated through appropriate transmission service (e.g., non-firm or PTP).”<sup>6</sup> As explained below, the Joint Utilities’ Compliance Filing fails to properly implement this new policy in at least two key ways that should be corrected by the Commission.

**A. The Commission Should Require Removal of the Requirement that a QF Execute a Non-Standard PPA Prior to Executing an ERIS GIA.**

The Joint Utilities’ Compliance Filing first improperly implements Order No. 23-005 by proposing that only QFs that have *executed* a non-standard PPA may execute an ERIS GIA.<sup>7</sup>

Worse still, if the QF has not been able to execute the non-standard PPA within 60 days of the utility’s tender of the GIA, the QF would be removed from the interconnection queue.<sup>8</sup> The Joint Utilities’ proposed “executed non-standard PPA” requirement is not included within, or suggested in any way, by Order No. 23-005, and should be rejected for a number of reasons.

The Joint Utilities’ primary argument invokes an interconnection project readiness issue that is not directly related to, and certainly not addressed or resolved by, Order No. 23-005. The Joint Utilities argue that “requiring a non-standard PPA before signing an ERIS QF-LGIA ensures an orderly interconnection process, prevents interconnection queue congestion, and

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<sup>6</sup> Order No. 23-005, p. 34.

<sup>7</sup> Joint Utilities’ Compliance Filing, pp. 2, 5 (Sept. 12, 2023) (proposing revision to LGIP, § 11.3); *id.*, pp. 7-9 (proposing revisions to the non-standard contracting process for small QFs to require execution of a non-standard PPA prior to execution of the ERIS SGIA).

<sup>8</sup> Joint Utilities’ Compliance Filing, p. 5.

better ensures more efficient use of the existing transmission system.”<sup>9</sup> Rather than raising an issue unique to implementation of ERIS for QFs, the Joint Utilities are raising a more general issue of project readiness requirements for the interconnection process that is being addressed in the region and nationally. But interconnection queue reform has no direct relation to Order No. 23-005, which is not a queue reform directive. Project readiness and queue reform were not at issue or addressed in testimony in this docket, much less in Order No. 23-005, and therefore it should not serve as the basis for a significant policy change through the Joint Utilities’ Compliance Filing.

Notably, PacifiCorp has already received this Commission’s approval of its QF queue reform in Docket No. UM 2108, which was carefully considered and revised by the Commission in response to comments in that docket. The result of PacifiCorp’s QF queue reform docket significantly tightened the project readiness requirements for QFs to enter the interconnection queue and advance to an executed GIA.<sup>10</sup> Those requirements will already apply to QFs seeking ERIS interconnection to PacifiCorp under the new policy at issue here. However, even PacifiCorp’s queue reform did *not* limit QFs to an executed PPA as the *only* milestone option

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<sup>9</sup> Joint Utilities’ Compliance Filing, p. 6.

<sup>10</sup> *In the Matter of PacifiCorp, dba Pacific Power, Application for an Order Approving Queue Reform Proposal*, Docket No. UM 2108, Order No. 20-268 (Aug. 19, 2020).

prior to executing the GIA.<sup>11</sup> In other words, the Joint Utilities ask for a more restrictive “readiness” requirement here than the Commission granted to the only utility that has thus far put forth a queue reform proposal for QFs. There is no basis to implement a whole new, more restrictive policy in the Compliance Filing without reopening the whole queue reform question.

The Joint Utilities’ apparent suggestion that project readiness is a unique issue to QFs’ use of ERIS mandated by Order No. 23-005 misses the mark. The perceived risk of the QF developer signing an GIA but not being commercially ready and thus clogging up the queue applies equally to NRIS interconnections, and indeed to any non-QF interconnection as well. Any QF (or non-QF) executing a GIA (NRIS or ERIS) is at risk of not being able to successfully secure a PPA or other offtake arrangement, and even after securing the PPA or other offtake arrangement it is at risk of not being constructed. Indeed, contrary to the Joint Utilities’ suggestions, PURPA’s mandatory purchase obligation provides the QF with a higher likelihood

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<sup>11</sup> See PacifiCorp’s Compliance Filing, Docket No. UM 2108, at Attachment 1, LGIA, § 11.3 (Aug. 31, 2020), stating as follows:

Within fifteen (15) Business Days after receipt of the final QF-LGIA, and prior to execution of the final QF-LGIA, Interconnection Customer shall provide Transmission Provider with (i) demonstration of continued Site Control pursuant to Article 3.3.1(iii)(a). At the same time, Interconnection Customer also shall provide reasonable evidence that one or more of the following milestones in the development of the Large Generating Facility, at Interconnection Customer election, has been achieved: (i) the execution of a contract for the supply or transportation of fuel to the Large Generating Facility; (ii) the execution of a contract for the supply of cooling water to the Large Generating Facility; (iii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the Large Generating Facility; (iv) execution of a contract (or comparable evidence) for the sale of electric energy or capacity from the Large Generating Facility; or (v) application for an air, water, or land use permit. At the same time, Interconnection customer also shall provide reasonable evidence that it has obtained certification as a Qualifying Facility pursuant to 18 C.F.R. § 292.207. . . .

of ultimately being able to execute a PPA than the non-QF seeking a PPA through a request for proposals (“RFP”).

The Joint Utilities’ newly proposed requirement is also clearly discriminatory against QFs in violation of PURPA’s non-discrimination provisions.<sup>12</sup> No other generator type (e.g., non-QF or utility-developed benchmark) must demonstrate it has a fully executed PPA as the *only* option to sign the GIA. As the Joint Utilities candidly acknowledge in a footnote, this newly proposed requirement significantly restricts the milestones that normally are required to execute GIA, which currently include several options other than executing a non-standard PPA and which are not within the control of the utility, such as having applied for an air, water, or land use permit.<sup>13</sup> Thus, even if this were a queue reform docket, the Joint Utilities’ proposal is discriminatory and unreasonable.

Further, the Joint Utilities’ proposed “executed non-standard PPA” requirement violates the QF’s right to create a legally enforceable obligation (“LEO”) without a fully executed PPA. Under PURPA, a QF may create a LEO without a fully executed PPA.<sup>14</sup> The LEO concept is intended to protect the QF against the reluctant utility thwarting, or delaying, the QF’s right to the benefits of a long-term contract under PURPA.<sup>15</sup> The rule precludes a utility from “avoiding PURPA requirements simply by refusing to enter into a contract with a QF.”<sup>16</sup>

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<sup>12</sup> See 18 CFR § 292.306(a) (interconnection must be offered to QF on “nondiscriminatory basis”).

<sup>13</sup> Joint Utilities’ Compliance Filing, p. 5 & n. 9 (citing LGIP, § 11.3).

<sup>14</sup> 18 CFR § 292.304(d).

<sup>15</sup> See *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, at PP 32-35 (Oct. 4, 2011) (explaining the intent of the LEO rule).

<sup>16</sup> *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, at P 35.

But the Joint Utilities’ proposal enables the interconnecting and purchasing utility to do just that because it does not provide any exception for the utility’s power supply arm’s intransigence or unreasonableness in negotiating the non-standard PPA. Under the Joint Utilities’ proposal, the utility could easily “avoid[] PURPA requirements” to interconnect the QF using ERIS as directed in Order No. 23-005 “simply by refusing to enter into a contract [, i.e., the non-standard PPA,] with a QF.”<sup>17</sup> Thus, the Joint Utilities’ proposal violates PURPA for the additional reason that it deprives QFs of the benefits of the LEO rule.

More generally, the practical effect of the Joint Utilities’ newly proposed policy will be to thwart use of the Commission’s newly created ERIS option. It would create a new, arbitrary deadline and narrow window within which QF developers must execute a non-standard PPA with a utility. And, by doing so, it will give the utility’s power supply arm an unreasonable amount of leverage to force the QF to “agree” to non-standard PPA terms under potentially extreme time pressure. QFs seeking to work through the new ERIS option will face difficulty balancing this new “executed non-standard PPA” deadline against the timeframes within which the counterparty utility will be providing information necessary to negotiate the PPA in the interconnection process, and in many cases it may prove impossible to achieve the new deadline with the information supplied by the utility.

For example, under the Joint Utilities’ proposal, once the utility provides the Facilities Study, the interconnection customer normally has 90 days to execute the LGIA to the utility.<sup>18</sup>

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<sup>17</sup> *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, at P 35.

<sup>18</sup> *See, e.g.*, Joint Utilities Compliance Filing, Attachment 1, § 11.1, p. 28 (stating the interconnection customer must provide any comments on the Facilities Study within 30

The Facilities Study could be the first time that the utility provides the interconnection customer with sufficient information to know how frequently ERIS service would result in curtailment, and the first time that it could request the appropriate non-standard pricing and contract terms to seriously engage in contract negotiations (at least over this important provision). Under the utilities' avoided cost tariffs, the purchasing utility's power supply arm likely would insist upon at least 30 days and maybe as much as 60 days after receipt of the relevant ERIS information in the Facilities Study to provide the QF with the ERIS-specific pricing and curtailment provisions for the utility's proposed non-standard PPA.<sup>19</sup> That would leave only 30 days for the QF to negotiate and execute the purchasing utility's proposed non-standard PPA if it were going to be able to do so prior to the typical 90-day deadline to execute the ERIS LGIA. The QF would need to immediately communicate it agrees to the purchasing utility's proposed non-standard PPA on the same day the QF receives it if the QF were to have any chance of receiving an executable non-standard PPA in time to meet the "executed non-standard PPA" requirement and timely qualify to execute the LGIA. If the QF does not meet that 90-day deadline, the utility's interconnection arm would remove the QF from the interconnection queue and force it to start

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<sup>19</sup> days, PGE must provide a draft LGIA 30 days after comments are submitted, and then the interconnection customer must execute the LGIA within 30 days). See, e.g., PacifiCorp Non-standard Avoided Cost Rates at §§ C.2 and D.4. (PacifiCorp has 30 days to provide pricing once all information is provided, and then another 30 days to provide draft contract terms once the QF has reviewed the pricing). In addition, PacifiCorp has historically refused to provide even a draft PPA until the QF provided an interconnection study showing a certain commercial operation date, which may not be until the Facilities Study stage, and it is unclear if PacifiCorp is continuing to engage in these practices. E.g., *Dalreed Solar LLC v. PacifiCorp*, Docket No. UM 2125, Order No. 21-097 at 1-3 (Mar. 30, 2021).



over its interconnection process anew. It is theoretically possible that the QF could extend the deadlines by initiating Dispute Resolution procedures, but it still risks losing its queue position.<sup>20</sup>

As the above example demonstrates, the Joint Utilities' proposal results in overlapping deadlines that will normally not be enough time to complete negotiations and execute a PPA, especially when the interconnection customer or utility might not know enough about curtailment until the return of the Facilities Study to complete the PPA. It is not reasonable to assume the parties could negotiate a PPA within 90 days, and it is even more unreasonable to punish the interconnection customer with removal from the interconnection queue if it fails to meet the 90-day deadline in the LGIP to execute the LGIA due to inability to complete and execute a PPA in that limited window.

In sum, the Commission should reject the Joint Utilities' proposal to require QFs to execute a non-standard PPA prior to executing an ERIS GIA.

**B. The Commission Should Amend the New Interconnection Procedures to Clearly Require the Interconnecting Utility to Describe in Reasonable Detail in the ERIS Reports the Frequency and Extent of Curtailment Necessary to Avoid Network Upgrades in the NRIS Report.**

The Joint Utilities' Compliance Filing also fails to properly implement Order No. 23-005 by failing to provide any guidance to QFs as to when the interconnecting utility will identify the level of curtailment that will be necessary to enable the use of ERIS instead of NRIS.

A QF attempting to use the new ERIS option is beholden to the purchasing and interconnecting utility's cooperation in supplying information regarding the level of curtailment required to avoid network upgrades. The key feature of Order No. 23-005 is that the QF may

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<sup>20</sup> See, e.g., Joint Utilities Compliance Filing, Attachment 1, § 13.5, pp. 36-39.

sign a non-standard PPA allowing for curtailments at a level that the purchasing and interconnecting utility “agrees obviates the need for the Network Upgrades identified in a NRIS report and can be accommodated through appropriate transmission service (*e.g.*, non-firm or PTP).”<sup>21</sup> As the Commission explained, the “curtailment provisions will impact the QF resource’s ability to respond to load during times of high system stress, and we anticipate that negotiations may need to address the avoided cost rate impacts of any reduction in the QF’s capacity value.”<sup>22</sup> Thus, without clarity from the utility’s transmission function in the ERIS reports regarding the amount of curtailment that would be required to accommodate ERIS in lieu of NRIS, it would likely be impossible to negotiate the non-standard PPA’s curtailment provisions, much less any impacts on price. In practice, the utility could defeat the right to use the new ERIS option by refusing to provide clarity on the level of curtailment it will require.

Despite the obvious need for clear information from the utility regarding the level of curtailment required to implement ERIS, the Joint Utilities’ Compliance Filing does not require the interconnecting utility to supply such information to the QF at any stage in the process. Indeed, it provides no guidance at all on how the QF will obtain information regarding the level of curtailment the utility agrees is necessary to avoid network upgrades in the NRIS reports. Similarly, the Joint Utilities provided no further guidance to Staff and QF parties at the workshop on their Compliance Filing. The Interconnection Customer Coalition is left to assume that absent action from this Commission, the Joint Utilities would not provide such information to an interconnecting QF.

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<sup>21</sup> Order No. 23-005, p. 34.

<sup>22</sup> Order No. 23-005, p. 34.

Accordingly, the Commission should require the new interconnection procedures to clearly require the interconnecting utility to describe in reasonable detail in the ERIS reports the frequency and extent of curtailment that the utility “agrees obviates the need for the Network Upgrades identified in a NRIS report and can be accommodated through appropriate transmission service (e.g., non-firm or PTP).”<sup>23</sup>

### III. CONCLUSION

For the reasons articulated herein, the Commission should require the Joint Utilities to promptly correct their Compliance Filing in accordance with the recommendation in these comments.

Respectfully submitted on this 22nd day of November 2023.

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<sup>23</sup> Order No. 23-005, p. 34.